



U.S. Department of Justice
Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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JUL 22 2011

By Email and First Class Mail

Eileen Scofield, Esq.
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Atlanta, GA 30309

Dear Ms. Scofield:

This is in response to your email of March 28, 2011, to the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in which you seek guidance pertaining to documents that a prime contractor may request from a subcontractor's employees in light of the prime contractor's obligation to use E-Verify under the terms of a federal government contract. You pose the following questions:

1. Can an employer be required to give an employee a copy of the employee's own initial E-Verify page or employment authorized page?
2. Can the employer be required to give an employee a copy of the employer/company's E-Verify registration page?
3. Under the FAR [FAR 52.222.54], can the prime contractor request either of the above from either the subcontractor and/or the worker of the subcontractor, and if so, when?

As you know, OSC investigates allegations of national origin and citizenship status discrimination in the workplace, as well as over-documentation in the employment verification process ("document abuse") and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. Although we cannot comment on any particular case or set of facts, we can share with you general information regarding requirements under the anti-discrimination provision of the INA.

Your first question inquires about an employer's obligation to provide its employees with a print-out of the E-Verify screen indicating that an individual employee has been determined to be work-authorized. As you correctly note, as a practical matter not all employees of a subcontractor assigned to a prime contract requiring E-Verify will have been run through E-Verify at the outset of the prime-sub contractual relationship. In addition, some employees who were run through E-Verify may be in the process of resolving a TNC. Furthermore, we are unaware of any publicly available guidance that addresses this question. Therefore, we recommend that you contact the Verification Division of U.S. Citizenship and Immigration Services (USCIS), which administers the E-Verify program. The Verification Division can be reached by calling (888) 464-4218 or by visiting its website at www.uscis.gov/everify.

Your second question inquires about an employer's obligation to provide its employees with a print-out of the E-Verify screen confirming the company's registration. *The E-Verify Program for Employment Verification Memorandum of Understanding* states that employer "participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA)." E-Verify MOU, Art. V, F. As you note, the public currently has access to a list of federal contractors enrolled in E-Verify on the E-Verify homepage at www.uscis.gov/everify under the "For Federal Contractors" section. The list is available under "Useful Links" on the right hand side of the federal contractors page. Prime contractors wishing to confirm the enrollment of subcontractors in E-Verify may also wish to contact the Verification Division for further information as noted above.

With respect to your third question, a prime contractor seeking E-Verify information directly from its subcontractor or the subcontractor's employees may be limited by the considerations discussed above. First, workers may not possess their E-Verify results. Second, a prime contractor seeking E-Verify information from its subcontractor may be limited by the subcontractor's obligations under the E-Verify MOU. E-Verify requires that an employer "use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU." E-Verify MOU, Art. II, C.13. According to the MOU, an employer is required to safeguard information obtained and the means of access to it to ensure that it is "not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes." E-Verify MOU, Art. II, C.13. Furthermore, the E-Verify MOU states that "the information which it [the employer] receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties." E-Verify MOU, Art. II, C.14. Accordingly, in seeking information about a subcontractor's employees, a prime contractor may wish to consult the Verification Division and its legal counsel.

We hope that this information is of assistance to you. If you have further questions, please contact OSC on our toll-free hotline (1-800-255-8155) or visit OSC's website at <http://www.justice.gov/crt/about/osc/>.

Sincerely,



Seema Nanda
Acting Deputy Special Counsel